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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brittany Allen,

10 Plaintiff,

11 v.

12 Express Facility Management,

13 Defendant.
14

No. CV-24-00676-PHX-DLR

ORDER

15
16 Before the Court is Defendant Express Facility Management's ("EFM") motion for
17 summary judgment (Doc. 52), which is fully briefed (Docs. 61, 62). For the following
18 reasons, the Court grants the motion.

19 **I. Background**

20 On December 27, 2023, Plaintiff Brittany Allen sued EFM in state court alleging
21 she experienced discrimination, harassment, sexual harassment, and retaliation during her
22 employment at EFM. (Doc. 1-1 at 2, 4-5.) On March 27, 2024, EFM filed a notice of
23 removal in this Court, alleging both federal question jurisdiction pursuant to 28 U.S.C. §
24 1331 and diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Doc. 1 at 2-3.) EFM now
25 moves for summary judgment. (Doc. 52.)

26 **II. Legal Standard**

27 Summary judgment is appropriate when there is no genuine dispute as to any
28 material fact and, viewing those facts in a light most favorable to the non-moving party,

1 the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is
2 material if it might affect the outcome of the case, and a dispute is genuine if a reasonable
3 jury could find for the non-moving party based on the competing evidence. *Anderson v.*
4 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment may also be entered
5 “against a party who fails to make a showing sufficient to establish the existence of an
6 element essential to that party’s case, and on which that party will bear the burden of proof
7 at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

8 The party seeking summary judgment “bears the initial responsibility of informing
9 the district court of the basis for its motion, and identifying those portions of [the record],
10 if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Id.*
11 at 323 (quotation omitted). The burden then shifts to the non-movant to establish the
12 existence of a genuine and material factual dispute. *Id.* at 324. The non-movant “must do
13 more than simply show that there is some metaphysical doubt as to the material facts” it
14 must “come forward with specific facts showing that there is a genuine issue for trial.”
15 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (internal
16 quotation and citation omitted). “If the nonmoving party fails to produce enough evidence
17 to create a genuine issue of material fact, the moving party wins the motion for summary
18 judgment.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d. 1099,
19 1103 (9th Cir. 2000).

20 In considering a motion for summary judgment, the court must regard as true the
21 non-moving party’s evidence, as long as it is supported by affidavits or other evidentiary
22 material. *Anderson*, 477 U.S. at 255. However, the non-moving party may not merely rest
23 on its pleadings; it must produce some significant probative evidence tending to contradict
24 the moving party’s allegations, thereby creating a material question of fact. *Id.* at 256-57
25 (holding that the plaintiff must present affirmative evidence to defeat a properly supported
26 motion for summary judgment); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
27 1989) (“A summary judgment motion cannot be defeated by relying solely on conclusory
28 allegations unsupported by factual data.” (citation omitted)).

1 **III. Analysis**

2 To withstand the motion for summary judgment, Allen must point to specific facts
3 showing that there is a genuine issue for trial. In her Response (Doc. 61), Allen merely
4 alleges she “experienced multiple bouts of racism, harassment, and sexual harassment”
5 during her employment with EFM. (Doc. 61.) But the Response itself is not evidence, and
6 Allen proffers no evidence controverting EFM’s motion, as required by Rule 56. *See* Fed.
7 R. Civ. P. 56(c)(1)(A) (“A party asserting that a fact . . . is genuinely disputed must support
8 the assertion by . . . citing to particular parts of materials in the record, including
9 depositions, documents, electronically stored information, affidavits or declarations,
10 stipulations (including those made for purposes of the motion only), admissions,
11 interrogatory answers, or other materials.”). “The court need consider only the cited
12 materials” in the briefings. Fed. R. Civ. P. 56(c)(3); *see also Keenan v. Allan*, 91 F.3d 1275,
13 1279 (9th Cir. 1996) (noting it is not the court’s task “to scour the record in search of a
14 genuine issue of triable fact,” but rather, the court relies “on the nonmoving party to
15 identify with reasonable particularity the evidence that precludes summary judgment.”
16 (citations omitted)). Accordingly, under Rule 56(e)(2), the Court deems EFM’s facts as
17 undisputed for the purposes of its motion and will proceed to determine if EFM has
18 demonstrated it is entitled to summary judgment as a matter of law. *See* Fed. R. Civ. P.
19 56(e)(3).

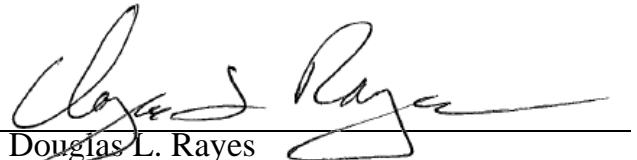
20 To establish both her sexual harassment and generalized harassment claims, Allen
21 must show “(1) the existence of a hostile work environment to which the plaintiff was
22 subjected, and (2) that the employer is liable for the harassment that caused the hostile
23 environment to exist.” *Freitag v. Ayers*, 468 F.3d 528, 539 (9th Cir. 2006) (citation
24 omitted). Further, to satisfy the first element of the sexual harassment claim, Allen must
25 show that “(1) she was subjected to verbal or physical conduct of a sexual nature, (2) this
26 conduct was unwelcome, and (3) this conduct was sufficiently severe or pervasive to alter
27 the conditions of employment and create an abusive working environment.” *Id.* (quotation
28 omitted). The “working environment must both subjectively and objectively be perceived

1 as abusive, and the objective analysis is done from the perspective of a reasonable woman.”
 2 *Fuller v. Idaho Dep’t of Corr.*, 865 F.3d 1154, 1161 (9th Cir. 2017) (internal quotation
 3 marks omitted). Because Allen has proffered no evidence to the Court and EFM’s evidence
 4 demonstrates the absence of a hostile work environment, Allen has not shown there is a
 5 material question of fact for trial. EFM is therefore entitled to summary judgment on
 6 Allen’s sexual harassment and harassment claims.

7 Likewise, to demonstrate a discrimination claim, Allen must establish a prima facie
 8 case of discrimination. *Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 (9th Cir.
 9 2003). To do so, Allen “must offer evidence that give[s] rise to an inference of unlawful
 10 discrimination, either through the framework set forth in *McDonnell Douglas Corp. v.*
 11 *Green* or with direct or circumstantial evidence of discriminatory intent.” *Id.* (internal
 12 quotation marks omitted). Under *McDonnell Douglas*, unlawful discrimination is
 13 presumed if Allen can show that “(1) she belongs to a protected class, (2) she was
 14 performing according to her employer’s legitimate expectations, (3) she suffered an
 15 adverse employment action, and (4) other employees with qualifications similar to her own
 16 were treated more favorably.” *Id.* n.5 (quotation omitted). Otherwise, Allen must offer
 17 direct evidence “which, if believed, proves the fact [of discriminatory animus] without
 18 inference or presumption.” *Id.* (quotation omitted). Because Allen has produced no
 19 evidence to the Court, and EFM’s evidence reveals neither discriminatory animus nor that
 20 the *McDonnell Douglas* requirements are met, EFM is entitled to judgment on this claim.

21 **IT IS ORDERED** that EFM’s motion for summary judgment (Doc. 52) is
 22 **GRANTED**. The Clerk of the Court is directed to enter judgment accordingly and
 23 terminate the case.

24 Dated this 15th day of September, 2025.

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 28 Douglas L. Rayes
 Senior United States District Judge